

LBNL – PROCUREMENT STANDARD PRACTICES

Section: 29 Taxes

Subject: 29.2 California Sales and Use Tax

PURPOSE: This standard practice (SP) describes the application of California sales and use tax to Laboratory subcontracts.

POLICY: The Laboratory will pay sales and use tax (referred to below as sales tax) in connection with its subcontracts when legally due, in compliance with State law, including the California State Board of Equalization rules and regulations, and as may be directed by DOE.

SCOPE: This SP applies to all subcontracts.

PROCEDURES:

General

Generally, subcontractors are responsible for any sales tax due on Laboratory subcontracts.

Most tangible items procured under Laboratory subcontracts are for direct resale to the U.S. Government (DOE) and, accordingly, are exempt from sales tax.

Resale Certificate

The Laboratory has been granted the following State permit which exempts the Laboratory's purchases of items for resale from California State sales tax:

California State Sales Permit SR CH-21-835970

Subcontractors may require the Laboratory to provide a certificate that an item is being purchased for resale (known as a *Resale Certificate*). Accordingly, procurement specialists shall include a statement of exemption from sales tax in subcontracts involving the purchase of items for resale and, upon request, provide subcontractors with a signed *Resale Certificate* for the appropriate State. This certificate is available in the Formcab folder located on the Procurement Server.

Tax-Exempt Acquisitions

Purchases should be treated as for resale to DOE and exempt from State sales tax unless purchased for a taxable purpose. Examples of tax-exempt acquisitions include:

- Common materials and services;
- Machinery and equipment;
- Lease-to-ownership transactions; and
- Acquisitions for stores stock.

Note: If a Laboratory user withdraws an item from stores stock for a taxable purpose, such as an improvement to realty, a taxable project is used and Accounting remits the sales tax directly to the State Board of Equalization.

Taxable

The application of sales tax for subcontracts depends upon

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Acquisitions

factors such as how the items will be used at the Laboratory or whether an item loses its identity. Generally, sales tax applies to:

- Acquisitions made for the improvement of realty. This includes materials and fixtures used as improvements to realty for purposes of construction, alteration, maintenance, and repair of any buildings or structures. The labor costs for such work are not subject to the sales tax (see further explanation below under *Major Projects*).
- Leases of personal property. This includes leases under a GSA or non-GSA agreement, but excludes lease-to-ownership acquisitions. The sales tax applies to the gross amount of the lease, including lease charges and mandatory maintenance service.
- Personal property that does not become the property of DOE. This includes non-federal work-for-others acquisitions, except where the sponsor declines to take title, is exempt from the sales tax, or the amount does not exceed an applicable dollar threshold .

Sales Tax Determinations

Procurement specialists must determine whether sales tax is applicable and, if so, to which items, and apply the tax to the items in the subcontract. To determine whether an item is taxable, the procurement specialist may coordinate with the requester. Procurement specialists must notify requestors when it appears that items to be purchased are taxable and additional funding is required for the sales tax.

Solicitations and Subcontracts

The taxability of items should be noted in solicitations and subcontract documents (see *Resale Certificates*, above). When sales tax applies, the subcontract should indicate which item(s) are subject to sales tax and whether the sales tax is payable separately or already included in the price.

The procurement specialist shall not approve for payment any State or local tax, fee, or charge considered to be inapplicable or invalid. The procurement specialist shall contact the procurement supervisor for resolution when a subcontractor insists on the payment of any such State or local tax, fee, or charge, and will not accept a subcontract statement of exemption from sales tax or a signed Resale Certificate.

Improvements to Realty

Improvements to realty include:

Taxable Materials — Property that is attached or affixed to real property so that it becomes an integral and inseparable part of the real property is classified as taxable materials for sales tax purposes. Examples of taxable materials include the

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items in Exhibit 29.2.a, *Examples of Taxable Materials and Fixtures*.

Taxable Fixtures — Property that is physically or constructively annexed to realty with the intent that it remain annexed indefinitely to the realty is classified as fixtures for sales tax purposes. Examples of such fixtures include the items found in Exhibit 29.2.a, *Examples of Taxable Materials and Fixtures*.

To determine whether an item is for the improvement of realty, the procurement specialist should coordinate with the procurement supervisor, the requestor, and Facilities, as necessary.

Major Projects

Questions regarding the applicability of sales tax to complex and/or major subcontracts should be directed to Laboratory Counsel through the procurement supervisor. Examples of such projects include:

- Fabrications that may involve installation of equipment in newly constructed buildings or structures, or structures that are built specifically to house or accommodate fabricated items;
- Remodeling or rehabilitation of existing structures; or
- Laboratory projects that may involve the installation of material or equipment placed in the structure or building that may be considered as improvements to realty when they become attached or affixed to the structure.

Separately stated charges for labor related to construction and installation are not subject to sales tax.

Sponsored Projects (Work-For-Others)

Subcontracts funded with work-for-others funding (Federal or non-Federal) should treat personal property as nontaxable and subcontractors should not invoice or be paid any sales tax. The Accounting Department will remit directly to the State Board of Equalization any applicable sales tax for personal property for which title passes to the non-Federal work-for-others sponsor.

Nontaxable Prefabricated Buildings

Prefabricated units, such as office trailers registered with the California Department of Motor Vehicles and/or Department of Housing and Community Development, are personal property and are considered nontaxable. Small portable buildings, such as sheds or kiosks that merely rest on piers and are attached to realty only through plumbing and utility hookups, are also personal property and are considered nontaxable.

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Taxable Prefabricated Buildings

A prefabricated or modular building or other structure that meets or is modified to meet all applicable building codes and regulations and that is permanently affixed to realty is an improvement to realty and is considered taxable.

RESPONSIBILITIES:

Procurement Specialist

The procurement specialist will:

- Monitor acquisitions for sales tax applicability and coordinate with the requester as needed;
- Note in solicitations and subcontract documents when sales tax applies;
- Contact the procurement supervisor for resolution when the subcontractor insists on the payment of inapplicable or invalid State or local tax, fee, or charge or non-acceptance of a subcontract statement of exemption from sales tax or a signed Resale Certificate, and
- Obtain guidance from the procurement supervisor on matters related to sales tax.

Procurement Supervisor

The procurement supervisor will:

- Provide the procurement specialist with assistance with the resolution of payment to the subcontractor of inapplicable or invalid State or local tax, fee, or charge or non-acceptance of a subcontract statement of exemption from sales tax or a signed Resale Certificate.

REFERENCES:

• Prime Contract Clause I.99 - State and Local Taxes
Prime Contract Clause I.37 - Taxes - Foreign Cost-Reimbursement Contracts

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Taxable Materials	Taxable Fixtures
Asphalt Bricks Builders' hardware Caulking material Cement Conduit Doors Ducts Electric wiring and connections Flooring Glass Gravel Insulation Lath Lead Lime Linoleum Lumber Macadam Millwork Mortar Oil Paint Paper Piping, valves, and pipe fittings Plaster Power poles, towers, and lines Putty Reinforcing mesh Roofing Sand Sheet metal Steel Stone Stucco Tile Wall coping Wallboard Wallpaper Wall-to-wall carpeting (when affixed to the floor) Weather stripping Windows Window screens Wire netting and screen Wood preserver	Air conditioning units Awnings Burglar alarm and fire alarm fixtures Cabinets, counters, and lockers (prefabricated) Cranes (including moving parts of cranes) affixed or annexed to a building, structure or fixed work Electric generators (affixed to and accessory to a building, structure or fixed works) Elevators, hoists, and conveying units Furnaces, boilers, and heating units Lighting fixtures Plumbing fixtures Refrigeration units Signs Television antennas Transformers and switchgear Vault doors and equipment Venetian blinds